Proposals to Regulate Charitable Fund-raising

in Saskatchewan:

A Consultation Paper

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I Introduction

Saskatchewan has a history and tradition of voluntarism and community building. Through registered charities and non-profit organizations, individuals come together to provide services and raise money for community needs. The province has a rich heritage of philanthropy.

The vast majority of charitable organizations engage in fund-raising campaigns with open and ethical practices. Canvassers are provided with information to clearly explain the organization and the nature of the campaign, and the campaign is usually publicized in advance.

Several charitable organizations initiated discussions with Saskatchewan Justice in the fall of 2000 about emerging concerns with respect to questionable practices of some charitable fund-raisers. As a result, a steering committee of charitable organizations, law enforcement agencies and Saskatchewan Justice was established to consider the concerns and options to address the concerns.

Fund-raising for charities is a major undertaking and is essential to their success. Ensuring the public has confidence in the voluntary sector is important for its continued well-being and the vital work charities do in our communities.

Charitable fund-raising is undertaken by incorporated and unincorporated organizations, while some people raise funds for charitable purposes without being connected with a charitable organization. Some are national and international organizations, while others are provincial or local, including children's recreational and educational programs.

Fund-raising takes several forms. Charities often undertake their own fund-raising drives using volunteers or staff as canvassers, while some contract with fund-raising businesses to raise funds for them. In some instances, goods or services are sold.

Solicitations for charitable donations are made by mail, telephone, door-to-door and other methods. It can be confusing for members of the public who may receive many solicitations, only some of which are from organizations with which they are acquainted. The problem is heightened when the name of one charity sounds very like that of another charity.

II Purpose and Outcomes

While a number of initiatives are underway at the national level, this consultation paper has been developed to:

- identify current issues or problems in Saskatchewan;
- engage charities and the public in discussions about charitable fund-raising to raise public awareness about the issues; and
- develop options with respect to action that can be taken within Saskatchewan to address issues.

The objectives are to:

- provide greater assurance that the public has sufficient information to make informed decisions about donating charitable funds, while not placing onerous requirements on charitable organizations;
- support standards in charitable fund-raising;
- continue to build confidence in the charitable sector; and
- build partnerships between those concerned about issues related to charitable fund-raising.

III National Initiatives

Charitable organizations provide support and assistance to the public in many fields and are invaluable in providing services to the public. A number of issues have been identified, and work is underway on several fronts to address them.

The Canadian Centre for Philanthropy undertook a study in 1998 to consider public opinion and accountability in the voluntary sector.[1] Through this study, it was found that accountability needed improvement in a number of areas, including:

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1 "Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector", also known as the Broadbent Report, 1999

- improving transparency of charitable organizations by informing, reporting, responding to requests for information and operating organizations in a manner that can readily be observed and understood; and

- improving the assessment of program outcomes, to increase understanding of the effectiveness of organizations in accomplishing their goals.

Since then, the Centre has developed a draft model fund-raising code (see Appendix B), and is encouraging discussion of the draft code and its adoption by charities. The Centre encourages self-regulation of the sector through use of codes of practice to address concerns about accountability and to increase donor confidence.

The federal government, in collaboration with the voluntary sector, in the year 2000 initiated the Voluntary Sector Initiative. The policy objectives of the Initiative are to increase the capacity of the voluntary sector to meet the demands Canadian society places on it and to improve the government's policies, programs and services, leading to increased public confidence. The federal government is currently engaging in collaborative work with the voluntary sector to address issues, one of which is the revision of some federal regulatory measures. Round-table discussions are currently underway in relation to this initiative.

IV Issues to be Addressed in Saskatchewan

A. "Look Alike" Charities

Development of "look alike" charities is a growing concern. Sometimes a new organization is created with a name that is similar enough to that of a well-known charity that prospective donors are misled, believing they are donating to the well-known charity. This can easily happen when prospective donors are solicited at the door or by telephone. Another approach is for the canvasser to say that the organization he or she represents is "like" a well-known charity. The public becomes sceptical as a result and fund-raising for all charities may suffer.

B. Misrepresentations

Complaints have been made about misrepresentation. In some cases, a canvasser may represent or imply that the organization for which he or she is canvassing is endorsed or supported by a particular organization or person when this is not so. A donor may be influenced by these representations.

Under Saskatchewan's *Consumer Protection Act*, misrepresentation is prohibited. However, the Act only applies to the sale of goods or services, not to charitable fund-raising.

Where a fund-raiser uses fraudulent methods of practice, law enforcement agencies can act, as fraud is a *Criminal Code* offence.

C. Fund-raising Companies

Fund-raising costs money, whether a charity uses volunteers, paid staff or contracts with a fund-raising company. For many smaller charities, fund-raising companies are a valuable resource, as these charities don't have the resources to engage in their own fund-raising campaigns.

Saskatchewan does not require that canvassers disclose to persons being solicited for donations whether the canvasser is a volunteer or paid canvasser representing a fund-raising company. If a donor later learns that a paid canvasser was soliciting on behalf of a charity and that a moderate or substantial portion of donated funds is being paid to the company, this impacts on public perceptions. Disclosure offers potential donors the ability to make informed decisions about donating.

In recent years, however, some out-of-province charities that contract with the same out-of-province fund-raising companies have been soliciting funds in this province using local paid canvassers. The concerns range from possible misrepresentations to perhaps paying door-to-door canvassers directly from cash donations and not accounting properly for funds raised. Some charities may also be "look alike" charities.

The difference when funds are raised by a fund-raising company, rather than directly by a charitable organization, is that a fund-raising company is engaged in a business activity when soliciting funds from the public. The charities with whom they contract and the public from whom they solicit funds may need an added

level of protection, namely provincial licensing, including requirements of financial security.

V Existing Regulation for Fund-raising in Saskatchewan

The *Income Tax Act (Canada)*, administered by the Canada Customs and Revenue Agency (CCRA), is used to grant charity status to qualifying charitable organizations and groups and provides the tax registration number. Under that Act, 80% of receipted donations are to be used for charitable purposes.

The *Canada Corporations Act* applies to federally incorporated charities and, in Saskatchewan, *The Non-profit Corporations Act, 1995* provides for incorporation of charitable organizations, as does *The Cooperatives Act, 1996.*

Financial reports must be filed with CCRA by all charities, and federally incorporated charities must file financial reports with the government. Those that are provincially incorporated must file reports with the Corporations Branch, Saskatchewan Justice. Financial information about charities from these agencies is available to the public on request.

In Saskatchewan, fund-raising companies that operate for profit and engage in door-to-door or telephone solicitations are licensed as direct sellers and are bonded. This does not apply to non-profit fund-raising companies. In any case, *The Direct Sellers Act* was not intended to offer protection for fund-raising, so it falls short of offering specific protection such as requiring agreements between charities and fund-raising companies, trusting of donated funds and disclosure of information to consumers.

Municipal licensing bylaws apply in some instances, such as fund-raising by paid canvassers. As noted earlier, fund-raising businesses are actually engaged in a business activity.

VI Legislation in Other Provinces

A. Alberta

Alberta has a *Charitable Fund-raising Act*. It provides for:

- provincial registration of charities (incorporated or not incorporated) that raise more than $25,000 annually;
- licensing of fund-raising companies, including requirements for financial security, trusting of donated funds and agreements with charitable organizations with whom they contract;
- a director under the Act who may license fund-raising companies and register charities, refuse to issue licences or registrations or apply terms and conditions, or suspend or cancel licences or registrations;
- disclosure of relevant information to the public when canvassing (e.g., name of the charity, purpose for which contributions will be used, cost of fund-raising and, where a fund-raising business is used, the specific amount or percentage of contributions paid to the business);
- content and maintenance of records;
- standards of practice and prohibited practices (e.g., false or misleading representations, hours of solicitation); and
- investigations and remedies.

B. Manitoba

Manitoba has *The Charities Endorsement Act*. It provides for authorization to be given for a fund-raising campaign. For campaigns being undertaken in more than one municipality, approval must be given by the Director of Consumer Protection. In all other cases, the authorization must be given by the municipality. Canvassing without authorization is prohibited. The authorization may be for a time limited period or until revoked.

Where a charitable organization intends to contract with a fund-raising company to undertake the solicitation, Manitoba's legislation provides that authorization to undertake the campaign cannot be given unless:

- the terms of the contract are disclosed to the authorizing person;
- remuneration to be paid is expressed in the contract (as a fixed sum or percentage);
- the authorizing person approves the amount of remuneration; and
- the fund-raising business confirms in writing that it will give the authorizing person an audited financial statement or other required information.

In terms of penalties, Manitoba's Act has a maximum fine of $500, unlike Alberta's Act, which provides for a fine of up to $100,000.

VII What Issues Need to be Addressed In Saskatchewan?

It is important that confidence in the charitable sector is maintained and strengthened. While it is desirable to have tools with which to deal with unsavoury behaviour, this must be balanced with the need to not create additional burdens for charities if other approaches are possible.

A. Public Information

A well-informed public is vitally important to address concerns with charitable fund-raising, as it is in relation to all consumer matters.

The majority of charities operate with integrity and in the public interest. More can be done in the area of public information, as the public must be informed about the work the charities do and the purpose for which funds are being solicited. Charities are working towards improving accountability and public awareness.

Donors also have an obligation to inform themselves. Although Saskatchewan does not currently have legislation requiring disclosure of specific information to prospective donors, people being solicited for donations may ask questions of the canvasser and should have every expectation of receiving answers. Questions

prospective donors may ask to better make informed decisions about donating are:

- the charitable purpose for which the contribution is being solicited;
- the cost of fund-raising and how much the charitable organization hopes to raise;
- whether the canvasser is a volunteer, member of the staff of the organization or a paid canvasser;
- if the canvasser is employed by a fund-raising business:
  - the name and address of the business;
  - the amount or percentage of funds raised being paid to the business;
  - how the canvasser is being paid;
- the business address of the charitable organization; and
- the name and phone number of a contact person with the charitable organization from whom the donor can obtain more information.

Most charitable and non-profit organizations readily provide this information and more. If the information is not available, the potential donor should be wary of the person or the organization soliciting donations.

As has been noted earlier in this paper, charitable organizations are working on voluntary self-regulatory measures to increase accountability and increase donor confidence in the sector. Through these efforts, increased education for charitable organizations and for the public in general is certainly possible.

B. Additional Regulation

Additional legislation governing some aspects of charitable fund-raising may be considered in Saskatchewan, as has been done in Alberta and Manitoba. When considering regulatory measures, it is necessary to:

- consider regulatory measures that already exist;

- determine what specific behaviours require additional regulation, i.e., the goal of the regulatory measures; and

- consider the implications of various regulatory options, including implications with respect to enforcement options.

The intent is to consider additional protection for the public and for charities without causing undue burden for charities. Regulation would be in addition to public education initiatives.

Regulatory options range from full regulation, including registration of charities and licensing of fund-raising businesses, to licensing of fund-raising businesses only. The approaches listed below can be taken individually, in combination, or adapted in some way to meet Saskatchewan needs.

1. Self-regulation

Voluntary self-regulation for charities, discussed earlier in this paper, is an important option. It is voluntary and, therefore, the least onerous of all regulatory models. The standards of practice set out in the code of practice can do much towards addressing issues in this sector.

The voluntary aspect of self-regulation as the only regulatory measure is, however, a problem in that a group need not adhere to the code of practice. Enforcement is the concern. If many of the concerns are with some fund-raising businesses, particularly out-of-province, this option on its own may not suffice because adherence is voluntary.

The following was recommended in the Broadbent Report:

> "We recommend that, as a condition for registration under the federal tax system, charitable organizations be required to adopt the ethical fundraising and financial accountability code developed by the Canadian Centre for Philanthropy, or an equivalent code, through formal resolutions of their boards, and to report publicly on so doing."[2]

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[2] Executive Summary, "Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector", 1999

2. Licensing of Fund-raising Businesses

Another approach is to require provincial licensing of fund-raising businesses. This was also recommended in the Broadbent Report, as follows:

> "In order to ensure that for-profit commercial fundraising companies which actually collect the monies raised are honest in their dealings with voluntary organizations, they should be licensed and bonded by provincial governments"[3]

Licensing requirements could include the following elements:

- requiring any representative who is not an employee of a fund-raising company to be licensed to engage in fund-raising as a business;
- requiring financial security, such as a bond or irrevocable letter of credit, filed with the provincial official responsible for administering the legislation;
- requiring the business to be incorporated;
- setting out what information is to be disclosed to the public when making solicitations, (e.g., name of the fund-raising company and its location, name of the charity for which funds are being solicited, purpose for which funds are solicited, amount or percentage of funds raised to be paid to the company and how the canvasser is being paid);
- requiring contracts with charities on whose behalf the fund-raising company is soliciting funds, including the amount or percentage being paid to the fund-raising company;
- prohibiting certain practices (e.g., false or misleading representations, extended hours of solicitation);
- requiring records and bank accounts to be retained within the province and filing of returns with the provincial regulator;
- requiring standard identification for all paid canvassers, providing detailed information about the fund-raising business, including the fund-raising company's licence number; and

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[3] Ibid

- enforcement of the legislation, including the ability to investigate and to impose fines and restitution in cases of non-compliance. Other options could also be considered.

This could address some concerns pertaining to fund-raising companies soliciting on behalf of charities, as they would be required to disclose to the public important information. Law enforcement personnel might better be able to determine if the company is licensed as required. The province could also condition or revoke licences where requirements were not being met. Legislation could include the ability for the government official administering the Act to issue cease-and-desist orders, freeze bank accounts and seize assets.

Under some provincial legislation, such as *The Consumer Protection Act*, consumers may also take court action where they have suffered a loss due to an unfair business practice. The court can make various orders, including restitution or damages. However, consumers do not often take such action and, if amounts are small, quite likely would not take such action.

Enforcement of legislation has limitations, however, particularly if a campaign is localized and done quickly. It may also be difficult for law enforcement officers to know who is a paid canvasser and who is a volunteer.

3. Applying Some Legislative Provisions to all Charities

Another approach, in addition to licensing fund-raising companies, could be to apply prohibited practices and disclosure requirements to all charities. Legislation would have to provide for consumers to take action (e.g., apply to the court for relief) if they had concerns.

This could offer greater assurance that prospective donors have better information to help them make decisions. However, if many charities adopt the voluntary code of practice, applying the legislative provisions to them might not be of particular value as they will already have voluntarily adopted a high standard. By voluntarily providing information to prospective donors, the public will become more aware of what they should be looking for or asking when being solicited for funds.

4. Requiring Registration of all Charities

Saskatchewan could follow Alberta's example and require registration under charitable fund-raising legislation for all charities (exempting those that raise less than a specific amount per year). Prohibited practices, financial reporting and disclosure requirements would then apply to them as well.

Registration might offer greater assurance that requirements of the legislation would be met. However, registration would greatly add to the work of the regulator, and most charities are already regulated under other provincial and federal legislation. Enforcement would also be an added issue for the regulator.

It is necessary to consider whether additional registration requirements would offer substantive benefits for the public. It would also be a more onerous requirement for charities.

VIII Steering Committee Recommendations

The Saskatchewan steering committee recommends the following:

- requiring provincial licensing for fund-raising businesses, as described above;
- developing strategies for increased public education about charitable fund-raising and about donor rights; and
- continuing to participate in and actively support initiatives taking place at the national level to strengthen the voluntary sector, including discussions about tax reform and voluntary self-regulation.

IX Questions for Discussion

1. Do you believe that public information and education in relation to charitable fund-raising would be of value? If yes, is this best done by the charitable organizations working together in addressing this matter? Do you have other suggestions?

2. Do you think that if charities adopt a voluntary code of practice most of the issues would be resolved, in conjunction with public information and education?

3. Is additional regulation of fund-raising necessary? If yes, should this be in the form of:

   - licensing of fund-raising businesses?
   - applying standards of practice to everyone engaging in charitable fund-raising activities?
   - in addition to licensing of fund-raising businesses, registering charities under fund-raising legislation and including reporting requirements for them?

4. Do you have other options you think should be considered in relation to addressing issues in charitable fund-raising?

APPENDIX A

Glossary of Terms

"charitable organization" means an incorporated or unincorporated organization that is formed to carry on activities that are primarily for the benefit of the public

"contribution" means money, goods or services or a promise or pledge to give money, goods or services

"fund-raising business" or "fund-raising company" means a person who:

(i) solicits on behalf of charitable organizations or manages or is responsible for solicitations made by or on behalf of a charitable organization;

(ii) provides the services mentioned in clause (i) for remuneration; and

(iii) is not an employee of the charitable organization on whose behalf the business engages in these activities

"solicitation" means:

(i) a direct or indirect request for a contribution in which it is stated or implied that the contribution will be used by a charitable organization or for a charitable purpose

(ii) a request for a contribution through a direct or indirect request to buy goods or services in which it is stated or implied that all or a portion of the purchase price will be used by a charitable organization or for a charitable purpose

APPENDIX B

Model fundraising code helps organizations stay legal and accountable

July 16, 1997; Canadian FundRaiser

In a combined effort by the Canadian Centre for Philanthropy and Revenue Canada, consultations are being held in communities across Canada to introduce charities to a new *Draft Model Code on Fundraising* developed by the Centre. The meetings are partnered with explanations by Revenue Canada officials of the details of the new, longer T3010 Charity Information Return Form, as part of an overall Centre program to "address concerns about charities' accountability in a way that does not require more legislation."

According to Gordon Floyd, the Centre's Public Affairs director, research indicates that more donor confidence leads to more and larger donations. Speaking to the recent Vitalize conference in Calgary, Floyd said that input for the draft has come from charity leaders and members of the Centre, and that he hopes that the final version will get wide acceptance from the governing boards of charities throughout Canada, which ultimately will be responsible to ensure adherence to the Code. The opportunity for charity boards to self-regulate their fundraising practices, he pointed out, will complement the various codes of ethics to which professional fundraisers already adhere.

A wide acceptance of this document, Floyd argues, may also eliminate the possible need for strict government measures in future, similar to those which have been introduced in the United States. The consultations ran throughout the Spring and into June, and after revisions this Summer, the Code will undergo further discussion at meetings in the Fall.

Draft Model Code for Fundraising Accountability

[Name of charity] _____, (Charitable Registration Number _____), adheres to the following policies in its fundraising activities:

A. Use of Funds

1. All donations will be used to further the mission and charitable objects of the charity.

2. All designated donations will be used for the purposes for which they are given; alternative uses will be negotiated with the donor if necessary due to program or organizational changes.

3. The charity's financial affairs will be conducted in an effective and responsible manner, in accordance with accepted principles of financial management, accounting procedures, and operational policies, including the provisions of this *Model Code for Fundraising Accountability*.

4. The amount spent on administrative costs, including fundraising, will be equivalent to or less than legal limits.

B. Donors' Rights

1. All donors are entitled to receive a charitable donations tax receipt.

2. Donors and prospective donors will never be subjected to coercion or undue pressure.

3. Donors will be encouraged to seek independent advice concerning any proposed gift that might significantly affect the donor's financial position, taxable income, or relationship with other family members.

4. All reasonable efforts will be taken to honour any request by a donor to be excluded from lists that the charity uses or shares with other organizations.

5. All reasonable efforts will be taken to honour any request by a donor or prospective donor not to be contacted in future fundraising campaigns.

6. All reasonable efforts will be taken to honour any request by a donor not to be contacted at home by telephone or other technology; also, all reasonable efforts will be taken to honour requests from donors who are contacted by telephone to receive printed material concerning the charity.

7. Any confidential information from or about donors that is obtained by, or on behalf of, the charity shall not be disclosed without the express consent of the donor.

8. All fundraising appeals by or on behalf of the charity will disclose the charity's name, its status as a registered charity, and the purpose for which funds are requested.

9. Donors and prospective donors are entitled to the following, on request and at no charge other than cost of reproduction and distribution:

   - the charity's most recent annual report and/or audited financial statements;
   - the charity's most recent Charity Information Return (T3010) as submitted to Revenue Canada (except the confidential schedules);
   - a list of the names of the members of the charity's governing board;
   - a copy of this Model Code and information about the process for registering complaints about violations of it.

10. Donors and prospective donors are entitled to know, on request, whether the individual asking for funds is a volunteer or a paid fundraiser.

C. Fundraising Practices

1. Volunteers, staff and consultants who solicit or receive funds on behalf of the charity shall:

   - act with fairness, integrity, openness, and in accordance with all applicable laws;
   - have no vested interest in a donor's gift that could result in personal gain;
   - disclose immediately to the charity any actual or apparent conflict of interest;
   - not accept gifts for purposes that are inconsistent with the charity's mission.

2. Fundraising solicitations will be truthful, accurately reflect the charity's mission and use of solicited funds, respect the dignity of those who benefit from the charity's activities, and neither exaggerate past achievements nor promise unrealistic results.

3. Paid fundraisers, whether staff or consultants, will be compensated by a reasonable salary, retainer or fee, and will not be paid finders' fees, commissions or other payments based on either the number of gifts or the value of funds raised; any performance-based compensation (such as bonuses) will be

consistent with the charity's compensation policies that apply to non-fundraising staff.

4. The charity will maintain control and ownership of its charitable assets, including its fundraising revenues and donor list.

D. Financial Disclosure

1. Financial reports will be factual and accurate, and will not knowingly contain misrepresentations or material omissions.

2. Fundraising revenues will be reported in accordance with the guidelines established by the Canadian Institute of Chartered Accountants.

3. Government grants or contributions will be reported separately of other fundraising revenues.

4. Financial reports will disclose both the total amount of any fundraising costs that are allocated to other program expenses, and the total amount of any overhead or administrative costs that are allocated to fundraising expenses.

5. If any fundraising revenues are reported net of expenses, the gross amount of fundraising revenues will also be disclosed.

6. All promotional material and tickets for fundraising events will disclose the actual amount of the ticket or admission price that is receiptable as a charitable donation.

E. Accountability & Enforcement

1. Each member of the governing board will function as a steward and trustee of funds donated to the charity.

2. The governing board will annually review the cost-effectiveness of the charity's fundraising activities.

3. The governing board will establish the charity's policies concerning external financial reporting including policies concerning the reasonable allocation, if any, of overhead costs to fundraising expenses, and of fundraising expenses to the charity's other programs.

4. The governing board will establish the charity's policies concerning the use of donor's names, including policies concerning sharing or rental of donor lists.

5. Each member of the governing board will receive a copy of this Model Code upon assuming office.

6. When any member of the governing board is informed of an alleged breach of this Model Code by any person acting on behalf of the charity, the entire board at its next meeting shall be informed of the allegation and any other relevant information, and the governing board shall determine whether procedural, legal, disciplinary or other corrective action is required.

For more information, or to offer comments or suggestions, contact Gordon Floyd, Canadian Centre for Philanthropy, 200-1329 Bay St, Toronto, Ontario, M5R 2C4. Telephone (416) 515-0764; Fax (416) 515-0773; eMail ccp@ccp.ca.